MAY 0 6 1991

LC 42.2:Y3

YEMEN ARAB REPUBLIC

A COUNTRY LAW STUDY PREPARED FOR
THE DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL

Yorguy Hakim

Library of Congress
LAW LIBRARY
American-British Law Division
European Law Division
Far Eastern Law Division
Hispanic Law Division
Near Eastern and African Law Division

1985

LAW LIBRARY PUBLICATIONS

A major responsibility of the Law Library of Congress is the preparation of reports on various topics in foreign, comparative, and international law in response to requests from the Members and Committees of Congress, the executive and judicial branches of the federal government, and others. Although the focus of many of these legal studies is so specific as to make them of use only to the requester, a number will appeal to a broader audience. With the approval of the original requester, these reports are reissued and made available for general distribution.

The Law Library also prepares a number of other publications, such as a series of guides to the law and legal literature of nations, extensive bibliographies, indexes, and contributions to scholarly journals.

The principal resources of all Law Library publications are its collection and research staff. The Law Library's holdings of over 1.7 million volumes constitute the world's largest and most comprehensive legal collection. Its staff of over forty-five legal specialists, researchers, and librarians--competent in more than fifty languages--can provide research and reference information on all of the major legal systems of the world, contemporary and historical.

Notice of all Law Library publications appears in the Library of Congress Information Bulletin. Specific inquiries or requests for copies may be addressed to The Law Librarian, Law Library, Library of Congress, Washington, D.C. 20540 (Tel. 202-287-9838).

YEMEN ARAB REPUBLIC

A Country Law Study
Prepared for the Department of the Navy,
Office of the Judge Advocate General

by Yorguy Hakim

Law Library
Library of Congress
Washington, D.C. 20540
1985

TABLE OF CONTENTS

I. GENERAL INFORMATION 1

II. HISTORICAL BACKGROUND, POLITICAL STRUCTURE, AND MAJOR RELIGIOUS INFLUENCES 1

The Zaydite Imamate 3

III. LOCAL LAW AND LEGAL SYSTEM 8

Customary Law 9

A. Court Structure; Civil and Criminal Jurisdiction. . 11

1. The High Court of Cassation 12

2. The Appellate Courts 13

3. The Prosecuting Department 15

4. Activities of the Court 15

5. Grievance Board 17

B. Nature of Criminal Proceedings 19

1. Comment on the Code of Criminal Procedure . . . 19

2. Arrest Procedure 20

3. Indictments 22

4. Rights of the Accused 22

5. Defense of the Accused 23

6. Trial Procedure/Procedural Safeguards 24

C. Criminal Law and Penalties 25

1. Sexual Offenses 25

2. Substance Abuse 26

3. Violent Crimes 27

D. Contracts and Elements of a Valid Contract 28

1. Capacity to Contract 30

2. Permissible Subject Matter 31

3. Gifts 31

E. Domestic Relations Law 32

1. Requirements for Valid Marriage 32

2. Prohibitions on Who Can Marry 34

3. Requirements for Support of Children and Spouse 35

4. Status of Illegitimate Children and Adoption . . 36

5. Abandonment 37

6. Divorce 38

F. Torts 39

1. Vicarious Liability 40

2. Liability Resulting from an Animal or an Inanimate Object 41

3. Checks 42

4. Leases and Loans 43

5. Property Ownership for Non-citizens 43

6. Import Duties 43

7. Currency Violations 44

8. Exchange of Currency on the Black Market 45

IV. BIBLIOGRAPHY 47

I. GENERAL INFORMATION

When talking of Yemen, we think of an area comprising North Yemen, known as the Yemen Arab Republic and subject of this study, and South Yemen, as the People's Democratic Republic of Yemen, a former British-occupied territory which gained its independence in 1967 and is now a Marxist state. The Yemen Arab Republic (YAR) is the smaller of the two Yemens. Located at the southwestern end of the Arabian peninsula, it lies southwest of Saudi Arabia, east of the Red Sea, and northwest of the People's Democratic Republic of Yemen. The capital city, San'a, is located in the center.

The population of the Yemen Arab Republic is about 7.7 million. The country, covering about 73,000 square miles, has abundant rainfall and a varied topography, atypical of the Arabian peninsula.

The Yemen Arab Republic maintains diplomatic relation with the majority of Arab and Islamic countries and with several western nations, including the United States.

II. HISTORICAL BACKGROUND, POLITICAL STRUCTURE, AND MAJOR RELIGIOUS INFLUENCES

Yemen, an important seat of ancient Arabian culture, embraced Islam in A.D. 637, when Ali Ibn Abi Tāleb, son-in-law and cousin of the Prophet Muhammad, effected the country's total conversion. Since then the history of Yemen has been marked by the early events that shaped the religious orientation of Yemen's population. After the death of the Prophet, political and religious ideas separated between those who sided with Ali as the rightful

heir of the prophet to rule the emerging Islamic state and the former companions of the Prophet, such as Abu Bakr 1/ and Umar Ibn al-Khattab, 2/ who succeeded him by bypassing his son-in-law. The tension between the two camps reached a climax when the third caliph (successor) Uthman Ibn-Affan was murdered. Uthman was the patriarch of the aristocratic Umayyad clan and his assassination started a blood feud between his cousin Mu'awiya, governor of Syria, and Ali, accused instigator of his cousin Uthman's murder. Ali was declared caliph, but Mu'awiya disputed his right. A civil war ensued between the two camps until Mu'awiya prevailed: Ali also was murdered, while praying in the mosque. Mu'awiya established the rule of the Umayyad dynasty and transferred the capital from Mecca to Damascus. Nevertheless, the seeds of division were sown so deep that the religious controversy between traditionalists and partisans of the house of the Prophet (Ahl al-Bayt) grew throughout the Umayyad rule. This feud culminated in the rebellion of al-Hussain, the son of Ali and Fatima the daughter of the Prophet, and in his martyrdom on the plain of Karbala (in today's Iraq) in A.H. 61 (A.D. 680). This tragic event set the stage for the ongoing strife between the traditionalists, the later Sunnites, and the partisans of Ali, the later Shi'ites.

After the fall of the Umayyads in A.D. 750, the Abbasides, 3/ who established themselves in Baghdad, continued to persecute their cousins the partisans of Ali. Although scattered over the Islamic empire, these

---

1/ Abu Bakr, the first caliph to succeed the prophet, is credited for launching the war against the apostates of Islam and for restoring unity among converts.

2/ Umar Ibn al-Khattāb, second caliph of the Islamic states, laid the foundation of the Islamic judicial system and set an example by his piety, thrift, and justice.

3/ Abbas was the uncle of the prophet Muhammad. The new empire was named after him.

Shi'ites secretly held on to their inclinations and beliefs, which eventually gave rise to the Zaydite doctrine and system of the Imamate in Yemen. Because of this persecution, the Shi'ites adopted the tradition of concealment known as "taqiya" and called on their followers to hide their affiliation with the Shi'ite party. Whether dealing with religion or politics, the Shi'ites still conceal their true feelings toward any dangerous issue if they find themselves among people who do not share their beliefs.

The Zaydite Imamate. According to the Imam Zayd, the doctrine of the Zaydites is the most moderate of the various Shi'ite sects and the most accessible to the Sunnites. It does not exaggerate the sanctification of Ali, nor does it denigrate the names of the two caliphs Abu Bakr and Umar as other Shi'ite sects do. 4/ The Zaydite doctrine neither recommends "taqiya" nor admits the return of the "hidden Imam" as the other Shi'ites who believe in the return of Ali and the other twelve Imams of his house, or the al-Uthnay Ashariyah.

The Zaydite doctrine rests on the following principles:

1. It is a doctrine open to interpretation within the Imam Zayd's teachings;

2. It accepts the opinion of the Sunnites (traditionalists) and Islamic sects;

3. It calls for tolerance for opinions from opponents so long as they derive from two sources: the Qur'an and the Sunna, (the sayings and the deeds of the Prophet).

4/ Ahmad Mahmūd Subhī, al-Mazhab al-Zaydī [The Zaydi Doctrine] (Alexandria 1981) 45 [in Arabic].

Due to these factors, Imam Zayd's ideas took firm root in various Islamic lands, such as the Daylam, Asbahan, Rayy (in Iran), and the plateaus of Yemen. 5/

In A.D. 893, Ali al-Hadi Yahya Ibn al-Hussein, a great-grandson of the caliph Ali, founded a Zaydite dynasty in Yemen at Sa'da, a northern city not far from today's Saudi frontier. This dynasty ruled Yemen until 1962. Zaydites and Sunnites shared the political fortune of Yemen.

The Sunnites established themselves in the coastal region of Tihama. Yemini Sunnites are known as Shafi'ites after al-Shafi'i's doctrine 6/ of the orthodox school of law, which they follow. The Zaydites occupied the plateaus and highlands of Yemen.

Political power has been held by the Zaydites under the system of the Imamate, while the Shafi'ites concerned themselves with commerce and economic well-being. Yemen has also gone through various periods of Islamic and European invasions. The most important events, in brief, were the following:

Conquerors other than the Abbasids, who had ruled until A.H. 202 (A.D. 818), were never able to hold Yemen for a long time. The Yemenite House of Tahir, A.H. 858-932 (A.D. 1454-1526), successfully resisted the neighboring Mamluks in the area of Syria and Egypt, who tried to bring Yemen under their reign. 7/

5/ Subhī, Id. at 277-278.

6/ Abu 'Abd Allah Muhammad Ibn Idris al-Shāfi'ī (A.D. 767-820), founder of the al-Shāfi'ī school of law, took an intermediary path between the independent invention of laws and the traditionalism of his period.

7/ Abdallah Ahmad al-Thawr, Hāthihi Hiya al-Yaman [This is Yemen] (San'a 1969) 320 and 322 [in Arabic].

The Ottoman Turks invaded Yemen for the first time in 1538 under the command of Sulayman Pacha, the Albanian. It took the Turkish army ten years to reach and occupy San'a in A.H. 954 (A.D. 1547). The war between the Yemenites and the Turks, however, continued throughout the land until the decisive battle of Sha'ub took place north of San'a, and the Turks withdrew their forces from all Yemenite regions except Zabid in A.H. 975 (A.D. 1568).

The following year the Turks proceeded from the town of Zabid under the command of the Turkish minister Sanan who, in spite of strong resistance, entered San'a in A.H. 977 (A.D. 1570). The Imam al Mansur Ibn Muhammad, who succeeded in unifying all the Yemeni tribes, continued the struggle against the Turks until the Yemenite army prevailed and forced the Turks to sign a peace treaty in A.H. 1022 (A.D. 1613). When Yemenites and Turks fought again in the battle of al-Safiya in 1636 and many Turks were killed, surrendered, or withdrew to the Kamaran Island and the other islands of Fursan, this defeat ended the second Turkish occupation of Yemen.

The third and last Turkish invasion took place in 1849 after 220 years of independent Yemenite rule. During the disputes between the sultans of Tihama, one of the sultans asked the Turkish sultan in Constantinople for help. The Turkish fleet sailed toward the Yemeni shore from Jeddah (a major port in Saudi Arabia today). In 1872 the Turkish army reached San'a under the command of Ahmad Mukhtar Pacha, who failed to restore the Ottoman rule in the northern region of Yemen. Nevertheless, the war between the Turks and the people of Yemen lasted more than half a century under the leadership of Imam Yahya. 8/ Before the final evacuation of Yemen, the Turks were confined

---

8/ Hāthihi Hiya al-Yaman, id. at 326.

to the coast and the coastal cities (from 1905-1911) until Imam Yahya expelled them. During World War I British soldiers destroyed and occupied the Red Sea port of Hudaydah. In 1925 war broke out between Yemen and Great Britain. The Imam Yahya finally succeeded in driving the British out of this territory.

In 1934, the Treaty of Ta'if was signed between Yemen and the Kingdom of Saudi Arabia. Yemen lost the province of Asir (Gisan region and the oasis of Najran in the north) to King Abd al-Aziz Ibn Saud. Hadramaut went to the British protectorate of Aden in the south. Throughout a long reign from 1904 until his assassination in 1948, Imam Yahya closed Yemen's frontiers to any western influence. His son Ahmad ruled until 1962. After his son al-Badr took over, the Imamate was ended on September 26, 1962 by a coup, and a republic was proclaimed. Nevertheless, Yemen was plunged into a bloody civil war between the royalist partisans of the Imam al-Badr, and republicans, supported by President Nasser of the United Arab Republic. This lasted eight years until an accord was reached in April of 1970. As a result of this accord, Imam al-Badr was ousted. The Republic was maintained, but the tribal chiefs kept a great deal of power in their hands, refusing to surrender all of their authority to the state. The social organization in the country remained unchanged.

The social structure of the Yemen Arab Republic resembles, to a great extent, the country's skyscrapers. It consists of mixed classes, castes, and groups with hierarchical relationships. The sayyid (descendant of the Prophet) is at the top, followed by the faqih (one versed in Islamic

jurisprudence) and the qabali (man of the tribe). These are followed by the discredited classes, such as merchants and artisans, and "despised ones," such as butchers, barbers, and town criers, all of whom fall collectively under the term anadil (those who do menial work). The last caste is the akhdam (servants). 9/

Friction exists between the urban and rural populations. Religious antagonism is also felt between Zaydites, Shafi'ites, Ismailites, 10/ and Jews. If we consider, for example, that a Shafi'ite sayyid living in a village is not identified by the same criteria as a Zaydite sayyid in the city, we can see the complexity of the social organization in Yemeni society. In spite of Yemen's cultural diversity, the Arab Islamic inhabitants do not follow uniform juridical principles. Nor do they have the same beliefs. A great gap exists between the people of the coastal plains and those of the plateaus, reflected on an ideological level by disagreement between the Shafi'ites Sunnites and the Zaydites; and on the tribal level by friction between the Zaraniq (a very important group in the Shafi'i land of Tihama) and the two powerful tribes of Hashid and Bakil, located to the north of San'a.

9/ Alain Rouaud, Les Yémen et leurs populations 134 (Bruxelles, Complexe, 1979).

10/ The Ismailites belong to a Shi'ite branch that retained the fundamental conceptions of the Imamate doctrine concerning the permanent need for a sinless and infallible Imam as political and religious leader of mankind. H.A.R. Gibb and J.H. Kramers, eds., "Ismailiya," Shorter Encyclopaedia of Islam 179 (Ithaca, 1953, Cornell University Press).

There is yet another feature of Yemini national life which has disturbed its long history: the traditional rivalry and antagonism between the conquering and domineering northern Arabs (Adnanites) and the southern Arabs (Qahtanites) 11/ from which the clan of Quraysh, the tribe of the prophet Muhammad originates.

III. LOCAL LAW AND LEGAL SYSTEM

The Constitution of the Yemen Arab Republic of June 19, 1974, 12/ emphasizes two points: 1) the religion of the State is Islam (Article 3); and 2) the source of all legislation is the Sacred Law called the Shari'ah (Article 4). Accordlingly Yemen has three sources of law: 1) the Qur'an; 2) the Shari'ah including the Hadith and Sunna (Hadith - sayings, Sunna - practices of the Prophet); and 3) the urf, the customary law generally considered by many to be part of the Shari'ah. According to Article 15 of the Constitution, "the Command Council shall assume the functions of the legislative and executive authorities of the state. It shall have the power to lay down general policy and define its general framework."

Because the population of Yemen is characterized by a plurality of creeds and customs, the social texture of the Republic is not uniform. Therefore some people are attached to Islamic law and tradition, while others

---

11/ Rouaud, supra note 9, at 135.

12/ "Yemen Arab Republic," The Middle East and North Africa, 1982-1983, 29th ed. (London, Europa Publications) p. 888. See also "Yemen Arab Republic," 1 International Encyclopaedia of Comparative Law (Tübingen, 1975) v.1, V/Z, p. Y1-3.

adhere to customs derived from the conditions of the physical environment. Aware of this reality, the government is attempting to bring about an integrated legal system that may replace the customary legal tradition still practiced in parts of the Republic.

Customary Law

Customary law plays an important role in tribal dispute resolution in the rural areas of the Yemenite society. It is still far from obsolete among peasant families newly established in urban areas. While the use of the Sacred Law (Shari'ah) is common among urban people, who are very well acquainted with its tenets and commands, Bedouins and peasants, who constitute a majority of the population, occasionally reject it when it does not respond to their elders' customs and traditions.

Bedouins most often invoke a non-written law, designated as urf (customary, traditions, plural: a'raf). Its application, however, is very narrow: Although Bedouins are numerous, Bedouinism is the least represented state in Yemen. Still practiced in the Jawf to the east of San'a, urf is based on a mystical belief in the unity of the tribal blood, meaning that members of a group are jointly liable and the blood of one allows such a member to redeem the crime of another. A person guilty of murder is not alone in his crime; adult members of his family through the fifth generation are equally responsible. 13/

13/ Joseph Chelhod, "La société Yéménite et le droit," L'Homme, avril-juin 1975, 72 (Paris, 1975).

Yemenite Bedouins have neither prisons nor executioners. An arbitrator [muhakkam], chosen by mutual consent of the two adversaries, settles disputes. The arbitrator is not empowered to pronounce penalties. He endeavors to repair the damage done to the victim. For instance, he may order a guilty party to pay an indemnity.

The customary law that the Yemenite peasants observe is strictly similar to that practiced by the Bedouins and characterized by one particular notion: honor. Honor dictates that everyone should keep his pledged word and also protect guests, refugees, route companions, or women against aggression.

The law of retaliation observed by Bedouins and peasants applies expressly to family or individual justice. A tribe that considers one of its members guilty of murder always seeks to prevent any revengeful act against him by granting him sanctuary. [14]/ This is another customary law of a corporate type. It is based on the hierarchical division of the Yemenite society whose social categories remind us of the Indian caste system. In a rough environment we must not be surprised to find such a customary law reflect the morality of the desert and the social organization of the ancient Yemenites as attested by the use of the word taghut for customary law, an appellation having pejorative, antireligious, anti-Islamic connotations. [15]/

---

[14]/ Chelhod, id. at 72.

[15]/ "Customary law is called taghut in a region reaching from Kuwait to Hadramaut" (transl. by Y. Hakim): Chelhod, id. at 83.

A. Court Structure: Civil and Criminal Jurisdiction

Eager to create a modern legal system similar to that adopted by other Arab States, the leaders of the YAR enacted the Law of Judicial Authority No. 23 of February 21, 1976. 16/ This law established four courts as part of a single system: Courts of Summary Jurisdiction, Courts of First Instance, Courts of First Instance and Appeal, and the High Court of Appeal and Cassation. This innovation, however, failed to create a homogeneous set of legal concepts that would have dealt with and mediated between different interpretations of the Shari'ah and might have suited at the same time the Zaydites and Shafi'ites, the urban, rural, and non-tribal factions of the populations. Far from showing a unified structure, the new system reflected the division of the population. In fact, several judicial systems existed in 1976, and each reflected a segment of the Yemini society. 17/

Realizing the failure of the Law of Judicial Authority No. 23, the government repealed this Law and promulgated Law of Judicial Authority No. 28 of September 20, 1979. 18/ Chapter II of this Law provides for the classification and constitution of the courts. Article 2 reads as follows:

Art. 2 The courts are composed of:

a) The High Court of Cassation

b) Courts of Appeal at the provinces

c) Preliminary Courts.

16/ Charles S. Rhynes, Law and Judicial Systems of Nations 842-43 (Washington, D.C., 1978). The original is not yet available in the Law Library.

17/ Area Handbook for the Yemens 220 (Washington, D.C., 1977).

18/ Tashrī'āt [Legislation YAR] 1980 at 167 [in Arabic].

Each of these courts is competent to deal with the cases referred to it in accordance with the law. Judicial power is vested in the Supreme Council of Justice formed by the President of the Republic or his deputy and the Minister of Justice, the President of the Cassation Court, the two deputies of the Cassation Court, the Legislative Advisor of the state or his deputy, the Prosecutor General, the Vice Minister of Justice, and two qualified members (art. 115).

According to article 122, the Supreme Council of Justice is competent to deal with the following matters:

1) propose the general policy for the development of judicial matters;

2) give its opinion regarding the magistrates and their integrity;

3) review the annual report forwarded by the Minister of Justice concerning the judges and the courts and the Prosecuting Department and their staff;

4) decide in all matters referred to the Council with regard to the appointment of judges, their promotion, removal, retirement, and transfer from one court to another (the opinion of the Council is final);

5) study all the draft laws and regulations issued by the Minister of Justice and the Prosecuting Department before sending them to the Council of Ministers;

6) review the draft of the budget of the judicial authority and give its opinion.

Under law No. 28 the judicial court system consists of the following:

1. <u>The High Court of Cassation</u>

This Cassation Court sits in the capital. It consists of a president, two deputies, and a sufficient number of judges. The Minister of Justice, after consultation with the President of the Court and approval of the High Council of Justice, forms the following branches: Civil Chamber,

Commercial Chamber, Personal Status Chamber, Criminal Chamber, and Examination of Court Decision Chamber. The President, or one of this deputies, or a senior magistrate presides over each chamber.

The Court of Cassation is composed of seventy magistrates from whom the President and deputy are selected. It is assisted by a technical office headed by a president who is selected from the High Court and a sufficient number of judges. The Minister of Justice, after consultation with the High Court President and approval of the High Council of Justice, selects the president and a member of this technical office for a one-year renewable term.

The responsibility of the technical office consists of the following: analyzing the judicial principles approved by the High Court of Cassation, publishing a compilation of decisions in booklets and cyclical circulars, preparing technical topics, participating in technical preparation of the Court's program, and supervising the library (art. 5).

The General Assembly of the High Court of Cassation is composed of the President of the Court, his two deputies, and the court magistrates. Its duties are set out by law.

2. <u>The Appellate Courts</u>

Each provincial capital has an appellate court with a president and an appropriate number of judges. The Minister of Justice determines their number after consultation with the President of the Appellate Court and approval of the High Council of Justice. The High Court of Justice may integrate all or part of one province's appellate court's jurisdiction with that of another (art. 7).

The appellate court of one province may convene inside or outside the venue of its jurisdiction according to the decision of the Minister of Justice after consultation with the President of the Court of Cassation (article 7, paragraph 2).

Provincial appellate court proceedings are conducted by three magistrates. Their decisions are taken by majority vote.

Within the jurisdiction of each provincial appellate court, preliminary courts are established in the capitals of the districts [alwiyah] and in the counties [nawahi]. These courts have only one judge each.

The Minister of Justice grants local jurisdiction to these courts with corroboration of the President of the Court of Cassation and with approval of the High Council of Justice.

It appears that the new Law of Judicial Authority emphasized in detail the function of the Appellate Court and the Court of Cassation but did not dwell enough on the lower courts whose functions are most important in any judicial system. The reason for this omission seems to lie in the complex social differences among the various factions of the Yemini population. As legislators observed these difficulties, they tried to remedy the point of contention in articles 8 and 9 of the Law of Judicial Authority No. 28 of 1979. The articles read as follows:

> Art. 8 Within the realm of competence of each Appellate Court of a province, preliminary courts shall be established in the capitals of the provinces and districts. Each of these courts shall be presided by one judge.
>
> The establishment of these courts, designation of their quarters, and delimitation of their local jurisdiction is decided by a decree from the Minister of Justice in consultation with the President of the Court of Cassation and approval of the High Council of Justice.

Art. 9 The establishment of specialized preliminary courts in the capitals of the provinces may be enacted by a decree of the Minister of Justice upon approval by the High Council of Justice. These courts will be competent to deal with a determined category of cases. 19/

3. The Prosecuting Department

Article 10 of Law No. 28 of 1979 provides that the Prosecuting Department be a judicial body which exercises its legal authority. All officers of the judiciary are attached to the Prosecuting Department. The Code of Criminal Procedure governs their conduct.

The duties of the Prosecuting Department are performed before the courts by the Prosecutor General, by the attorney general, by a head of the prosecution department, or by one of its deputies and assistants. Before the High Court of Cassation only the Prosecutor General or the first attorney general or the advocate general may perform that function.

Before each appellate court there is a head of the prosecuting department. The prosecutor general supervises his performance. He is entitled to delegate any of his powers except his power to confer permission to file public proceedings against any official of the criminal investigative division for a crime committed during the discharge of official duties.

4. Activities of the Courts

Yemen Arab Republic is divided into seven governorates, each having an appellate court composed of nine members. The jurisdiction of the appellate court covers the whole Republic in accordance with Ministerial

---

19/ As the Code of Civil and Commercial Procedure is not yet available at the Law Library of the Library of Congress it cannot be determined which cases fall under the jurisdiction of these courts.

Decree No. 151 of May 20, 1980. [20]/ Some tribunals of first instance were integrated into others by virtue of Ministerial Decree No. 152 of May 24, 1980. [21]/ Several new tribunals of first instance were created in various cities of Yemen to relieve the heavy workload. [22]/

The Ministry of Justice employed Sudanese experts to support the administrative system within the courts and to train the Yemini employees. [23]/ As a result of this reorganization, the government discovered that some of the courts were not collecting court fees. The government issued a circular urging all courts to collect their judicial fees. [24]/

As the Yemen Arab Republic experiments with modern commercial and civil laws, the Ministry of Justice struggles with ambiguities in various cases before the appellate courts. Judicial Circular No. 13 of April 19, 1980, [25]/ was issued to clarify ambiguities relating to appellate justice. The circular states that, according to Article 198 of the Commercial and Civil Procedure Code, an appeal is the right of every litigant in any case decided by a preliminary court. Litigants are not allowed to forfeit in advance the right to an appeal. The circular also forbids the Court of Appeal of the governorate [liwa] to hear appeals in cases when:

20/ al-Jarīdah al-Rasmiyah, al-Jumhūriyah al-Arabiyah al Yamaniyah [Official Gazette of the Yemen Arab Republic, hereafter YEM OG] No. 5 of May 30, 1980, p. 44 [YEM OG material cited in Arabic].

21/ YEM OG No. 5 of May 30, 1980, p. 45.

22/ Instructions No. 12 of April 1, 1980, YEM OG No. 4 of April 30, 1980, p. 52.

23/ Circular No. 20 of October 10, 1980, YEM OG No. 10 of October 30, 1980, p. 55.

24/ Circular No. 21 of October 12, 1980, YEM OG No. 10 of October 30, 1980, p. 57-58.

25/ YEM OG No. 4 of April 30, 1980, p. 53-58.

a) the subject of litigation does not exceed the value of 3,000 riyals, and the decision of the preliminary court is final;

b) the wife's and child's total alimony does not exceed 300 riyals for the wife and 150 riyals for the child or if there is no litigation concerning the reasons for the claim.

c) commercial matters decided by the tribunal do not exceed 5,000 riyals. In this case the commercial court decision is final.

d) reconciliation between the two litigants before the court is valid in the eyes of the Shari'ah, provided that it occurred in an open court before the judge confirmed in the minutes of the case. If the reconciliation contains any transgression against the Shari'ah, it is considered null and void and does not stand against the appeal by the interested party.

e) in accordance with article 190 of the Civil and Commercial Procedure Code, challenging an appeal is allowed only on those decisions where litigation has been terminated. Any other preliminary decision pertaining to evidence or investigation leading to the preparation of the cases before submitting it to the judge may not be appealed.

The circular deals also with the time limit for the appeal--usually thirty days following the sentence in an open court and in the presence of the concerned or of his attorney--or when he is duly notified of the sentence. However, if the time period for the appeal expires because it is interrupted by an unforeseen event such as death, insanity, or other loss of capacity, it will resume when someone volunteers to appear on behalf of the sentenced person.

5. Grievance Board

The Grievance Board was recently integrated into the Yemeni judicial system. This institution comes from an era that predates the establishment of the Islamic State. Some authorities claim that it existed in Arab society in the pre-Islamic era and that, according to the Sunna, the Prophet created it. The institution flourished and became an important approach for any

aggrieved individual to call upon the highest person in the state, to receive equity and justice, and to voice complaints against his lieutenants, tax collectors, scribes, etc.

The Yemen Arab Republic issued Presidential Decree No. 6 of February 28, 1981, establishing the Shari'ah Grievance Board. 26/ Its authority is to receive citizen's complaints and those of other government agencies in order to assist the judicial system in articulating the problems that confront it, in alleviating its many burdens, in scrutinizing a citizen's complaints and the circumstances which forced him to resort to the state, and in evaluating the strength or the weakness of his case (art. 4). If the Bureau finds that the complainant did not rely on legal authority or that certain procedural technicalities were not observed, the Bureau must inform the complainant by a reasoned letter of rejecting his complaint, or it must advise him of the proper recourse. Additionally, the Grievance Board expedites treatment of complaints and executes a Shari'ah court decision within thirty days following the sentence. If this is not done, the Board allows the complainant to present his case to the President of the Republic, who will decide the case or order trial of the officials who failed to execute the decision. 27/

26/ YEM OG No. 2 of February 28, 1981, p. 16-19

27/ Id., art. 10, at 18.

B. Nature of Criminal Proceedings

1. Comment on the Code of Criminal Procedure

In an attempt to legislate for all citizens of the Yemen Arab Republic (Yemenites) regardless of religious and tribal affiliation, the government issued Law No. 7 of February 27, 1979, [28]/ pertaining to the Criminal Procedure Code, which reflects the basic principles covering penal justice. The basic tenet is that a man is innocent until proven guilty, according to Article 24 of the Constitution. This law guarantees for the accused the complete liberty of defense. However, the law also accords the judge freedom to deal with any case not bound by any precedent or condition in seeking the truth. Because the criminal judge receives evidence containing two differing points of view, he is the one to review and to choose before giving his decision.

Another feature of the Yemen Criminal Procedure Code is the confession of the accused, which also plays an important role in Islamic justice generally. However, once the alleged criminal confesses his crime, the investigating judge should inquire about other evidence that may substantiate the case because "confession alone is an evidence that may sustain controversy like any other proof of evidence" (article 40 of the Prosecutor General No. 39 of March 26, 1979). Nevertheless, the Court is free to pronounce its sentence solely on the accused's confession treated as unqualified acknowledgment of guilt. In the case of a partial confession by advice of counsel, the court should continue to investigate the case and hear the testimony of witnesses.

---

[28]/ YEM OG No. 2 Supp. of February 28, 1979.

Admission of a confession, like any other evidence in a criminal case, depends upon the discretion and evaluation of the judge in accordance with article 315 of the Criminal Procedure Code. If the judge later discovers that the accused's confession is false, he may dismiss the confession and continue the investigation of the case. Confession must be voluntary.

2. Arrest Procedure

In accordance with articles 96 and 107 of the Code of Criminal Procedure, [29]/ an arrest is defined as holding a person and bringing him before the court or before the prosecuting department or judiciary police. Generally an arrest warrant is issued. If the arresting person was present before the representative of the judicial authority, a warrantless arrest is proper.

Arrested persons are held in a place other than that reserved for those already convicted, and they must be treated as though innocent. No bodily or mental harm is permitted to extract a confession from those arrested.

The arrest order must be signed by the ordering official. The order may be made orally if it is implemented in the presence of the ordering person. The official who issues orders of arrest in any other circumstance is held responsible.

The arrested individual must be notified of the reasons for his arrest. He is entitled to see the warrant for his arrest and to contact a lawyer or other person.

---

[29]/ YEM OG, supra note 28, at 11.

If the order for arrest is issued within the limits of the law, it is to be carried out throughout the Republic, on its ships, and in aircraft. An official may be requested to make an arrest outside the area of his jurisdiction. If the arrest is made outside his jurisdiction, he must surrender the arrested person to the local prosecuting department in order to take the adequate procedural precautions.

The law provides that the official who executes the arrest is entitled to use necessary force and to overcome any resistance by the arrested person or by another. Excessive force is not permitted. Consideration of such action is left to the court.

The arresting officer may enter the residence of the suspect. He may also enter the domicile of another if there is strong presumption that the accused is hiding there. The owner of that residence or any person there must allow the authorities to enter and must provide reasonable assistance to the search. If the property owner refuses to allow the search, the representative of the authority may use reasonable force to gain entry.

Once the order of arrest is issued, the officer may search the arrested person and confiscate any weapons. If the arrested is a woman, the searching should be done by a woman.

The arrest order may contain a provision for freeing the person arrested on bond. If not, the arresting officer accompanies the suspect immediately to the ordering officer.

There are other circumstances which require the criminal court and the prosecuting department to issue an arrest order against an accused or to subpoena him if they find strong evidence against him (art. 108). If the

accused did not respond to the subpoena for a valid reason, the investigator may issue a warrant of arrest to bring him before the court regardless of whether the offense imposes a precautionary imprisonment (art. 109).

The Code of Criminal Procedure strictly limits those instances when persons, houses, mail, cables, and telephone communication may be searched or tapped. Article 116 emphasizes that these have a certain inviolability. The law also provides that during the investigation the accused may call witnesses and compel the defendant to state his case. Cross-examination of the witnesses and confrontation are guaranteed.

3. Indictments

Criminal justice relies on the judge's freedom to reach a conviction during the trial proceedings in accordance with article 303 30/ of the Criminal Procedure Code. However, the same article states that the judge is not permitted to form his judgment on evidence that has not been introduced in an open court. This is a very important feature of Islamic judicial principles because in Islam there is no jury as in the case of western systems.

4. Rights of the Accused

Article 2 of the Criminal Procedure Code 31/ stipulates that

> . . . the accused is innocent until proven guilty and penalty is not pronounced unless a trial has taken place in accordance with the provisions of the law whereby the freedom of defense is safeguarded. Any procedure that violates the rights of the accused for his defense is considered absolutely void.

The Criminal Procedure Code provides that no person may be arrested or imprisoned without a warrant issued by the proper authority. The person in custody is entitled to read the warrant and to have an attorney. He must

---

30/ YEM OG, supra note 28, at 24.

31/ See also Article 24 of the Constitution.

be treated in a way which preserves his dignity, and he must not be injured physically or mentally. Any deposition given by him and proved to be exacted from him or from any witness under coersion, torture, or threat is considered void according to article 99. 32/

If women are in the house, tradition requires no entry and disturbance. 33/ Judicial police are competent to take into custody certain persons pursued by the judicial authorities for having committed felonies or violent crimes. They are also entitled to take into custody any person who has no known address or residence, who tries to hide to avoid questioning, who refuses to disclose his identity, who refuses to go to a precinct, or who is caught in a state of drunkenness. 34/

The law, on the other hand, provides that any citizen's home and private life are to be immune from any interference, surveillance, or search, and that each person is free to move, travel abroad, and participate in gatherings without restrictions (art. 5-7). 35/

5. Defense of the Accused

The accused may implement his defense by himself or through an attorney, either hired or provided by the court, depending on the seriousness of the crime. Information exchanged between the accused and his attorney is considered confidential. Article 137 36/ of the Criminal Procedure Codes states:

32/ YEM OG, supra note 28, at 11.

33/ Id., art. 100, at 11.

34/ Id., art. 104, at 11.

35/ Id., art. 110, at 11.

36/ Id., at 5.

> The investigator is not allowed to confiscate from the defender of the accused or the expert counsel any papers of affidavits the accused has released to them for the implementation of their mission, nor the letters exchanged between them in the case.

We can deduce from this article that the right of the defense involves immunity covering not only documents which the accused has surrendered to his lawyers, but correspondence as well.

Another important protection of the confidentiality of the accused's secrets is that they may not be disclosed by his lawyer even though the accused has confessed information concerning his crime. The law exempts the lawyer from any penalty for receiving such information (art. 156). On the contrary, anyone who discloses a secret received in professional confidence or in any other circumstance allowed by law, or anyone who uses that secret for his own benefit or for the benefit of a third person without express permission is liable for one year in prison and a 2,000 riyal fine. 37/

6. Trial Procedure/Procedural Safeguards

In court, the defendant may defend himself. He is also entitled to know what has been said during the course of the trial. If he is a foreigner and does not understand the Arabic language, the court must provide the accused with a translator, in accordance with article 278 of the Criminal Procedure Code. 38/

37/ Article 241/1 of the Sharī'ah Criminal Code Project as discussed in an article by Hasan S. Marsafāwi: "Himāyat huqūq al-afrād wa hurriyātihem al-Shakhsiyah fi dhil Qānūn al-Ijrā'āt al-Jazā'iyah" [Protection of the Individual Rights Under the Realm of the Criminal Procedure Code] in Majallat al-Sharī'ah wa al-Qānūn [Review of Shari'ah and Law], No. 2 of 1919, 60 [in Arabic].

38/ Id. at 22.

The accused should be given the opportunity to present his defense and to be the last one to speak de jure on his own behalf. He may appeal the sentence to an appellate court (art. 247). 39/

C. Criminal Law and Penalties

Available sources do not disclose that there is a criminal code in the YAR. Offenses and felonies are dealt with in accordance with provisions mentioned in the Code of Criminal Procedure.

When a sentence of capital punishment or severance of limb has been pronounced by the court, the Prosecuting Department must bring the case to the attention of the High Court of Cassation. With that opinion, the execution of such sentences requires the approval of the President of the Republic (art. 339). However, such penalties will not be implemented if the person who possesses the right of pardon exercises it (art. 409).

In addition to capital punishment, there are the penalties of crucifixion, stoning, decapitation, and death by firing squad provided for in articles 407 to 413 of the Code of Criminal Procedure. Penalties for severing the right hand and leg and flogging are provided for in articles 415 and 418 of the same Code. 40/

1. Sexual Offenses

Severe penalties are incurred for sexual and moral offenses under Islamic law. Prostitution, abortion, and pornography may not be practiced openly in an Islamic environment because Islam prohibits any sexual relationship between unmarried persons. Adultery [zina] requires

---

39/ Marsafāwi, supra note 37, at 27.

40/ Id. at 30-31.

death for both the male and the female. [41]/ Even if a man has intercourse with an animal he is considered an adulterer and is liable for death and the animal for burning. [42]/ Homosexuals are liable to the death penalty according to the Traditions of Prophet Muhammad. [43]/ False accusation of unlawful intercourse [qadhf] is punishable by death. However, the Yemenites are known for their compassion regarding the difficulties in ascertaining such crimes.

Adultery is not a cause for prohibition of marriage, but brings about an automatic dissolution. The woman is sent without payment of her deferred dower [mahr] to her family. A child born out of wedlock is left to the mother's charge in accordance with the dictum "the child belongs to the bed."

2. Substance Abuse

Consumption of alcohol is strictly forbidden in the Qur'an. Public drunkenness is punishable by six months in jail. The convicted person may stay in jail as long as it takes the President of the Republic to ratify the sentence, which may also include public flogging, in accordance with Circular No. 1 of January 17, 1980. [44]/

It is common knowledge that when people speak of Yemen, qat is mentioned as the principal addiction that touches practically all adult Yemenites. The tree known as catha edulis of the celastraceae family is widely cultivated and used by men, women, and children. [45]/ Throughout the

---

[41]/ Abu al-Hasan Abd Allah Ibn al-Murtada, 4 Sharh al-Azhār [Interpretation of the Flowers] 336 (Cairo) [in Arabic].

[42]/ Id. at 337.

[43]/ Id. at 338.

[44]/ YEM OG No. 1 of January 31, 1980, p. 52-53.

[45]/ Muhammad al-Sayyid Ayyūb, al-Yaman bayn al-Qāt wa-Fasād al-Hukm qabl al-Thawrah [Yemen Between Qāt and the Government Corruption Before the Revolution] 76 (Cairo, 1963) [in Arabic].

several centuries of its traditional use, it has had a very negative effect on the economy of the country and on the health of its people. Its cultivation has been practiced to the detriment of the coffee tree. Yet no legal sanction exists against its use.

3. Violent Crimes

Although available sources do not permit speculation on the legal provisions for violent crimes committed in the Yemen Arab Republic, we may safely suggest that any criminal action is dealt with according to either the Shari'ah or to customary law, depending upon where the crime is committed.

Despite rigidity of penalties prescribed in the Qur'an for theft or robbery, the penalty of mutilation for theft has been acknowledged in theory but ignored in practice. [46] This was due to the Zaydi attitude of flexibility in dealing with modern circumstances: "provisions change according to changing circumstances." [47] Nevertheless, Zaydites and Shafi'ites, and other Muslim sects claiming the Qur'an as their ultimate source differ in their treatment of homicide, blood money [diya], [48] and other aspects of customary laws.

Most villagers are inclined to carry arms, such as the rifle and the dagger, for use in tribal warfare, self-defense, vendettas, and as ornaments. The government banned carrying all kinds of arms inside the cities of the Republic with Presidential Decree No. 8 of January 25, 1979. [49]

---

[46] al-Murtada, supra note 41, at 410.

[47] al-Majellah [Ottoman Civil Code] 14 (Constantinople, 1879) [in Arabic].

[48] Chelhod, supra note 13, at 70

[49] Tashrī'āt, supra note 18, 1980, at 63.

One important feature of Islamic penal justice is reflected in the very old institution related to the concept of retribution when a homicide and other offenses are committed. Blood money is payable either by the culprit or by his kin or tribe. Other offenses including loss of a finger, an arm, or a leg require a varying amount of blood money. Whether blood money or retaliation is invoked, the action to be taken depends upon the tribal society, represented by the Sheikh's Council, which alone is able to pronounce and execute the death sentence. 50/

D. Contracts and Elements of a Valid Contract

The second part of the Civil Code of the Yemen Arab Republic, issued under Law No. 11 of April 21, 1979, 51/ specifies in article 63 that any person is competent to enter into a contract on behalf of another person by virtue of an agreement with the other party or by virtue of a provision in this law. If the contract has been concluded in favor of another person, the attorney who drafted the contract is responsible. 52/ If the attorney acted within the instructions given by his client, the client cannot dispute the contract. If the attorney added provisions within his mandate and on behalf of his client, any rights or obligations that result from the contract revert to the client. 53/

Furthermore, if the contractor did not disclose during the contract proceedings that he is acting on behalf of another person, the effects of the

---

50/ Chelhod, supra note 13, at 82.

51/ Tashrī'āt, supra note 18, 1980, art. 163, at 133.

52/ Id., art. 164.

53/ Id., art. 165.

contract will not bind the other party unless the other party is not concerned that he is dealing with an agent. 54/

If a power of attorney expires and both parties are unaware of this, the effects of the contract revert to the client or his heirs if previously agreed to. 55/

Law No. 10 of 1979 also provides that to make a valid contract a person must possess full capacity. Article 49 provides that a person enjoys his religious rights the minute he is born and a capacity to perform his civil rights when he reaches the age of majority (art. 50).

At the age of majority a person who has all his mental faculties becomes aware of civil responsibilities and may exercise his civil rights. When a person reaches the age of distinction (10 years), he lacks adult capacity but he has the capacity of a distinguishing child. Any person reaching the age of majority while he is dissolute is short of capacity and treated as a distinguishing child. Anyone who has not reached the distinguishing age or reaches it while he is insane or retarded is treated as having incapacity (art. 51). Those without capacity are subject to provisions governing guardianship and trusteeship as provided in the law of trusteeship and will be subjected to interdiction and placed under the supervision of the court and the prosecuting department (art. 52).

Interdiction, in accordance with article 5 of the Civil Code, is defined as follows:

> Article 55 Interdiction is the action of restraining a person by court order from managing his assets and of depriving him of the execution of his transaction. It is of two categories:

54/ Tashrī'āt, supra note 18, art. 166.

55/ Id., art. 167.

1) Interdiction for the benefit of the interdict will be exercised on the minor, the insane, the retarded, and the dissolute;

2) Interdiction for the benefit of a third person is exercised on the bankrupt for the benefit of his creditors, on the testator for the benefit of his heirs and creditors, and on the mortgagor for the benefit of the mortgagee.

This code also deals with the rights, sources, effects, assignment, and termination of contracts. A valid contract consists of the following:

> Article 137 The contract consists of an offer made by one contractant and of an acceptance by the other, or it may purport to both in such a way that it produces its effect on the subject of the contract. Each of the contractants is required to fulfill his obligation to the other. Special wording is not a condition; the agreement itself is what is important.

The parties to the contract are the two contractants. Each must meet the following criteria in order to qualify: 56/

1) possess capacity to exercise his civil rights within the realm of the contract;

2) possess competence and qualifications if he has initiated a contract on behalf of another person;

3) act of free will and not coercion; and

4) be serious (art. 161).

1. Capacity to Contract 57/

Anyone who reaches his age of majority is considered by law able to exercise his capacity to deal with others, especially in matters of managing his assets and investing his funds. If he has been pronounced by the court incompetent to do so by reason of insanity, minority, irresponsibility, or retardation, he is precluded from contracting in the interest of his own safety. Confinement also may be imposed on the bankrupt for the benefit of

---

56/ Tashrī'āt, supra note 18, 1980, at 133.

57/ Id.

his creditors, on a person for the benefit of his heirs and creditors if there is no justification for his dealings, on the mortgager for the protection of the mortgagee, etc. (art. 55). 58/

2. Permissible Subject Matter

Each contract must have a subject matter which, in accordance with article 183 of the Civil Code, may be a sum of money, a benefit, a debt, an action, or abstention from an action. Certain conditions should be inherent in the subject matter, i.e., it must be:

1) accessible according to the provisions of the contract;

2) existent when the contract is established;

3) discernable;

4) deliverable or dischargeable (art. 184).

Furthermore, if it is evident that the contract's place or intention is prohibited by the Shari'ah (Civil Code) or that it contradicts the public order or public mores, the contract is considered null and void (art. 194). Similarly, transactions as to things in the public domain, such as open lands and wild game, are invalid (art. 186). Generally, any transaction must contain certain benefits legally permitted to the contractants (art. 193).

3. Gifts

A gift in Islamic law is a contract by which someone voluntarily gives something to another person without compensation. It requires offer, acceptance, and reception. This contract may be initiated only by an adult

---

58/ Tashri'at, supra note 18, at 133.

of sound judgment and the gift does not become valid unless it is received by the beneficiary. 59/ Once a gift is received, it may not be taken from the beneficiary. However, if the beneficiary takes possession of the gift without the giver's permission, the contract is invalid. 60/ If anyone acknowledges the receipt of a gift still in the giver's hands, his acknowledgement is valid even if the gift is still in the giver's hands. If the receiver denies the gift later, the denial is invalid. 61/

Article 130 of the Civil Code refers to a special law regarding religious endowments, gifts, and testaments. 62/

E. Domestic Relations Law

1. Requirements for Valid Marriage

Under Law No. 10 of 1979 63/ issuing the book of the Civil Code (Shari'ah Transactions), article 50 provides that the age of majority is fifteen years if the person is mentally competent. Anyone who reaches the age of majority while in a state of insanity lacks capacity and is treated as a non-distinguishing child. If a child has not reached the distinguishing age or reaches it while he is in a state of insanity or retardation, he has no capacity at all.

59/ Abu al-Qāsim Najm al-DĪn Jafar Ibn al-Hasan al-Hilli, 2 Sharā'i al-Islām [Islamic Laws] 229 (Beirut, 1969) [in Arabic].

60/ Id. at 229.

61/ Id.

62/ Book 3 of the Civil Code is not available in the Library of Congress collection. The article indicates that donations, gifts, and testaments will be the subject of a special law.

63/ Tashrī'āt, supra note 18, 1980, at 122.

The government of the Yemen Arab Republic, legislating its control over the social life of its citizens, enacted Family Law No. 3 of January 8, 1978. [64]/ Chapter I deals with marriage and its validity in accordance with the following articles:

> Article 3 Marriage is concluded in a single council sitting whereby a male adult pronounces the offer of marriage according to customs and the counterpart accepts it. Offer and acceptance should not be tied to a term. Any other condition that is not related to the aim of the couple is void.
>
> Article 5 The contract of marriage may be concluded by pronunciation or in writing by a letter from a non-present person provided that this letter is read in the Council that received it.
>
> The contract is valid if it is initiated by a deaf-mute by a signal that indicates marriage.
>
> Article 6 The presence of two competent Muslim adult witnesses is necessary to make a valid contract of marriage.

This law provides also that a man may take four wives if he has the ability to do justice to all (art. 9).

Article 11 provides also that the person empowered to draw the contract formula, the husband, the representative of the wife, and her guardian should register the marriage contract with the competent authority within one week from the date of the contract. Otherwise, each one of them is liable for a penalty provided in the Criminal Code.

Marrying the male child who has not reached the age of fifteen is invalid even if his guardian accepts a contract (art. 19). If the guardian of the female child concludes a marriage contract on her behalf, that contract is valid on the condition of her consent during the ceremony. It is not permitted to be alone with her or to marry her or to penetrate her unless she has reached the age of sixteen and she is able to sustain intercourse.

---

[64]/ Tashrī'āt al-Jumhūriyah al-Arabiyah al-Yamaniyah [Legislation of the YAR from 1/1/1978 to 31/12/1978) 1978, San'a at 91 [in Arabic].

Anyone who contravenes these provisions is liable to a jail term of not less than one year and not more than three years in addition to what may be retribution for the crime.

2. Prohibition on Who Can Marry

Chapter 3 of the Family Law, in articles 21-26, provides for prohibitions on marriage in two areas: 1) relationship and 2) suckling. Article 21 reads as follows:

> The relations with whom a husband is prohibited [to have sexual relationships] [include] his paternal ascendants and descendants, their wives and those descendants from his parents and the descendants of his grandfathers and the parents of his wife and their branches.

Prohibitions on marriage are applied also to a woman who is breast-feeding an infant (during its first two year's of life).

A man is forbidden to marry a woman who:

1. is of a religion other than his unless she belongs to a scriptural religion (Christianity or Judaism);
2. is an apostate from the religion of Islam;
3. is married to another person;
4. has been accused of adultery;
5. is a thrice-divorced wife before marrying another husband and getting her divorce from him and observing her waiting period;
6. is in her waiting period in an irrevocable divorce from another husband;
7. is observing a pilgrimage;
8. is a person whose womanhood is not determined;
9. is the wife of a missing person before she is released from her matrimonial ties with her missing husband.

He is also prohibited to marry more than four wives. A Muslim woman cannot marry a non-Muslim.

3. Requirements for Support of Children and Spouse

Chapter 3 of the Law of the Family governs how a husband and wife would live together in accordance with the conditions set in the marriage contract. The Family Law states the following:

> Article 27 The husband is entitled to require from the wife her obedience in any way to achieve the interest of the family, especially that she:
>
> 1) go with him to the house of matrimony unless there is a clause in the contract to remain in her house or in the house of her parents whereby she must allow him to live with her and enter her quarters;
>
> 2) make herself available for legitimate intercourse without the presence of any person;
>
> 3) carry out his wishes and fulfill her work in the house of matrimony;
>
> 4) never leave the house of matrimony without his permission. However, the husband cannot forbid his wife to go out if she has a legitimate excuse or if custom dictates and if there is nothing to bring dishonor or disregard to her duties toward him especially when she goes out to take care of her assets or to perform her duty. Caring for her aged parents is considered a legitimate excuse when there is no one else to serve.
>
> Article 38 The wife shall be considered a run-away if she no longer obeys her husband. She will not be considered so in the following circumstances:
>
> 1) if the husband did not pay the advance amount of her dowry;
>
> 2) if he did not prepare the legal residence for her;
>
> 3) if she does not feel security for herself and for her assets with him;
>
> 4) if he refuses to support her and it was not possible to carry out the court decision concerning her alimony because he has no visible means of support.

Article 39 The husband must provide his wife with the following:

1) a legitimate dwelling suitable for both;

2) expenses and clothes for her;

3) justice between her and the other wives covering expenses and housing if they have gathered in one house.

Article 40 It is required that the legitimate dwelling should be independent [and be a place] where the wife find security for herself and for her assets, taking into consideration the social standing of the husband, the dwelling of his peers, city customs, and the protection of the wife. The husband may live in one house with his wife and her children whether they are born to her or to another wife even if they are adult. His parents and the women prohibited to him may also live with him if their housing is his duty, unless this causes the wife any stress if such a condition was not provided for in the contract.

Furthermore, the husband should provide for his revocably divorced wife during her waiting period and for the divorced pregnant wife until she delivers her child. Alimony takes precedence over all other obligations the husband sustains according to Family Law.

The Law also provides alimony for children and for indigent relatives. Alimony may also be charged to a rich son for the support of indigent or sick parents (art. 153).

4. Status of Illegitimate Children and Adoption

There are no provisions in the Family Law concerning the status of illegitimate children except article 114 which states:

Article 114 The filiation of a child is confirmed to his/her mother simply by affirmation of his/her birth (even without her acknowledgement and without any restriction or conditions).

Acknowledgment of a child of unknown parenthood can be legitimized if the would-be father or mother has not been contested by the child or if common sense, custom, or the sacred law do not contradict acknowledgment. Article 116 of the Family Law makes it illegal for a father to proclaim that his child was born of adultery.

Islam does not recognize adoption. Adoption is forbidden by the authority of the following verse in the Qur'an:

> Allah has not made for any man two hearts within him; nor has He made your wives whose backs you liken to the backs of your mothers [whom you divorce] as your mothers; nor has He made those whom you assert to be your sons your real sons. This is [only] the [manner of] speech of your mouth. But Allah speaks the truth and guides to the [right] way. [65]/

Article 127 of the Family Law repeats the Qur'an:

> Article 127 Parenthood is not legitimated by adoption even if the adoptee was of unknown parents. [66]/

The illegitimate child has no family relationship but his own. Neither his natural father, his natural mother, nor their descendants may inherit from him. Conversely he cannot claim any inheritance from them. Only legitimate children may qualify as heirs, and when there are no legitimate children, an estate is forfeited to the government. [67]/ Therefore, adultery, under Islamic law, eliminates acknowledgment of paternity.

5. Abandonment

When a child is abandoned by his parents because the natural parents do not want their adultery known, any person who finds the child is required by religion to care for him. The finder is entitled to exercise restricted

---

[65]/ The Holy Qur'an, xxxiii, 4.

[66]/ Tashrī'āt, supra note 64, 1978, at 97.

[67]/ al-Hilli, supra note 59, v. 3, p. 44.

parental authority over the foundling. If two people have found an abandoned child, the Shari'ah judge decides who is qualified to better serve and care for the child. 68/ Article 159 of the Family Law recommends what is best for the foundling in accordance with the Shari'ah.

6. Divorce

Under Book Two of the Family Law, marriage may be terminated by annulment, divorce, or death (art. 41).

Annulment of marriage may be implemented only by a court decision. Both husband and wife may seek cancellation of their marriage if there are legitimate grounds for their request such as the presence of a physical defect in the wife or insanity or leprosy in either person (art. 45). Apostasy of the husband or the wife may prompt annulment of marriage, and conversion of a wife to Islam and refusal of the husband to do likewise allows the judge to cancel their marriage (art. 47). Alcoholism is grounds for annulment.

The annulment of marriage is followed in the Family Law by the chapter on divorce defined in article 57, which states that divorce takes place according to a special formula.

Divorce in Islam is the husband's right but the wife may divorce her husband if the right is conceded to her in the marriage contract. The divorce is a pronouncement of a formula such as "I divorce thee" or "My wife is divorced." This pronouncement may be made twice by one party and called "revocable." This means that the husband may take back his wife by word or sign with or without her approval during the waiting period of 90 days. But, if he pronounces the formula three times, matrimony is ended immediately. He

---

68/ Abd al-Hamid al-Shirwāni, Tuhfat al-Muhtāj fi-Sharh al-Minhāj [The Needy's Jewel in Explaining the Method] 367 (Cairo, 1982) [in Arabic].

cannot take her back unless she marries another husband, is divorced after consummation of marriage and remarries her first husband by a new contract and a new dower (art. 68 of the Family Law).

F. Torts

The Yemen Arab Republic has adopted the principle of civil liability in its Civil Code along the same principles laid out in the first Ottoman Civil Code a century ago. The first and second chapters of the former code deal with the legal principles under which Islamic jurisprudence was enhanced and consolidated.

The Yemen Arab Republic enacted under Law No. 10 of April 21, 1979 the first book of the Civil Code dealing with general provisions for transactions. 69/ Article 4 of the first chapter dealing with general principles specifies, along with the Ottoman Civil Code (art. 20), that damage must be removed. Section 3 of the Yemen Civil Code, Chapter 1, deals with injury against a person and liability for negligence. Accordingly, liability may result in three different categories, those resulting from:

1. personal actions,
2. actions of a third person, and
3. actions of an animal or an inanimate object.

The first category states that any person who commits an action or neglects a duty intentionally, quasi-intentionally, or erroneously is obligated to compensate for any damage (art. 302). This law also provides that the person is liable for the illegal actions he commits against another person if he is of a distinguishing age (9 to 14 years). But if the damage is

---

69/ Tashrī'āt, supra note 18, 1980, at 119-167.

caused by a non-distinguishing person who is responsible for the damage, the judge has discretion to order a fair compensation to be taken from his assets and paid to the injured party.

If a person can prove that the damage he caused was not the result of his own act or was caused by an Act of God (force majeure) or was an error by the injured person or another person, he will not be obligated to compensate for the damage unless a text or a contract governs (art. 304).

The law also raises the question of legitimate defense when a person causes damage while defending himself, his honor, his assets, or those of another person. Such action does not require compensation for any damage unless it is excessive. In that case compensation is set according to the rules of justice (art. 305).

Any public official who, in performance of his official duties, causes damage to another person, is not held liable (art. 306).

Anyone who cause damage to another person in order to mitigate a greater harm will be liable for compensation which the judge estimates as fair (art. 307).

If several persons jointly commit a tort, their liability will be distributed equally among them unless the judge determines proportionate shares. If the joint tortfeasors conspired to commit the injury, they will be held jointly liable (art. 308).

There is a 3-year statute of limitations for tort claims.

1. Vicarious Liability

According to article 310 of the code, anyone by contract responsible for a person requiring care because of minority or mental or corporal incapacity is liable for damage caused by the incompetent. If the minor has assets, he must pay the compensation.

A minor is considered to be in need of supervision before he reaches the age of majority. The supervisor may avoid liability if it is confirmed that he has satisfactorily carried out his duties or if he can prove that the damage was caused by a force majeure (art. 310, para. 2).

An employer is responsible for selecting his employees with reasonable care. He is also responsible for their supervision and orientation to the implementation of their work and is liable for any damage his employees cause while fulfilling their responsibilities to him (arts. 312 and 331).

2. Liability Resulting from an Animal or an Inanimate Object

Articles 314-316 provide that the possessor of an animal, even if he was not its owner, is liable for any damage the animal causes as a result of his negligence. This is true even if the animal is lost, unless the possessor can prove that the accident happened due to circumstances beyond his reach or control.

Similar liability applies to a person who occupies but does not necessarily own a building that collapses and causes damage, whether the destruction is partial or total, if the cause of the damage cannot be attributed to negligent maintenance or to the age of the building or to a defective condition in it. Moreover, anyone who feels threatened by an imminent danger which may be caused by a building may ask the owner of the premises to take any necessary measures to avert the danger. If the owner does not respond, the threatened person may ask the court for permission to take the necessary measures at the expense of the building's owner (art. 315).

Finally, any person who contracts to exercise a special degree of care, such as supervision of mechanical instruments, is liable for any damage these instruments cause, unless he can prove that the damage was caused by a force majeure or by a cause beyond his control (art. 316).

3. Checks

Section 3 of Chapter 1 in the Commercial Code deals with the check--its validity, circulation, guarantee, endorsement, cashing. It deals also with the barred check--its presentation for cashing, loss, assignment, waiver, limitation or disclaimer of liability. When a check is presented on time without being cashed, its holder is entitled to go back to its drawer or endorser and other obligated person after he proves that a protest has been lodged against non-payment of the check.

This chapter also deals with penalties of imprisonment against any person who draws a check without having funds in the bank or who in bad faith orders the bank to stop payment of the check. A penalty of imprisonment of one year and a fine are in order.

Anyone who maliciously refuses to honor payment of a check while having funds deposited for the account of the drawer will be penalized by a one thousand riyal fine ($275.00) (art. 489).

The bank will be liable for a one hundred riyal fine if it delivers blank checks to a client without writing his name on each of the checks delivered (art. 490 bis).

If a check is presented for payment at maturity and is not paid, its holder is entitled to press his claim from the drawer or the endorser, after he protested the non-payment (art. 504). However, there are certain circumstance whereby a non-filing protest does not prejudice the right of the check holder to collect the amount of the check (arts. 506 and 507).

The statute of limitation concerning non-payment of checks is six months from the date of protest.

4. Leases and Loans

Provisions for leases have been enacted in accordance with article 130 in the Third Book of the Civil Code "Shari'ah Transactions" and for real property in the Fourth Book in accordance with article 131. 70/

5. Property Ownership Rights for Non-citizens

Available sources do not disclose any provisions regarding ownership rights of non-citizens. In view of the restrictive social environment prevailing throughout the Republic, foreigners are not permitted to own lands.

6. Import Duties

The Customs Law issued by Presidential Decree No. 14 of 1982 has been amended by a Command Council Decree/Law No. 32 of March 29, 1978 71/ concerning customs to be attached on means of transport such as private vehicles, taxis, trucks, and bicycles and tricycles. Another Command Council Decree/Law No. 10 of 1978 amends some clauses on tariffs on cranes, bulldozers, rigs, and motorcycles of all kinds. The rate for these articles is decreased, but on motorcycles it has increased substantially from 25% to 75% over their value.

Imports of foreign goods into Yemen Arab Republic is prohibited without a license issued by the High Committee for import-export. These licenses are personal and cannot be surrendered. The license is valid for one year during which time the merchandise must be delivered to the Republic. The

---

70/ Tashrī'āt, supra note 18, 1980, at 130. Neither book is in the Library of Congress.

71/ Tashrī'āt, supra note 64, 1978, at 70-71.

validity of the license may be extended if the goods to be imported are industrially under manufacture. Any violation of Import Law No. 18 of May 31, 1964, will be prosecuted. 72/

The goods imported for personal use by tourists are exempt from any duty. These include medals, decorations, and commemorative articles in accordance with article 85 of Law No. 17 of 1963. 73/

Regarding restrictions on the export of merchandise, the Yemen Arab Republic has exported coffee, cotton, hides and skins, and biscuits--earning 92.8 million riyals ($20.2 million) in 1979-80. This picture may change after Yemen's Five-Year Development Plan has been implemented. 74/

7. Currency Violations

Anyone who exports or helps export any paper or coin currency claiming that it is Yemenite currency will be guilty of a crime and liable for a jail term of not less than 5 years and not more that 10 years and for a fine determined by the court, in accordance with article 63 of Decree/Law No. 4 of July 27,1971. 75/ Anyone who falsifies, counterfeits, or participates in falsifying or counterfeiting any currency with the aim of circulating it or utilizing it as legal tender is guilty of a crime and will be liable for a jail term of not more than 15 years and for a fine not exceeding 20,000 riyals ($6,000.00). A jail term is also given anyone who

---

72/ al-Tashrī'āt al-Mālīyah wa al-Iqtisādīyah wa Qānūn al-Amal lil-Jumhūrīyah A.Y. [Fiscal, Economic and Labor Legislation for YAR] (San'a, 1971) at 207 [in Arabic].

73/ Id. at 19.

74/ The Middle East and North Africa, 1982-1983 887 (London, Europa Publications, 1982).

75/ Supra note 72, at 136.

manufactures or acquires a tool or a utensil for the purpose of falsifying or counterfeiting any Yemenite or foreign currency. The penalty includes a jail term of not more than 15 years and a fine not exceeding 10,000 riyals ($3,000.00).

8. Exchange of Currency on the Black Market

There is in the Yemen Arab Republic a general administration for currency, banks, and insurance, empowered to regulate credit and banking policies, to supervise their implementation, and to control the currency in order to support the national economy and the stability of the currency in accordance with provisions of Presidential Decree Law No. 19 of May 31, 1964. 76/

76/ Tashrī'āt, supra note 72, 1971, at 210.

BLANK PAGE

IV. BIBLIOGRAPHY

Abdallah, 'Umar. Ahkām al-Sharīah al-Islāmiyah fi al-Ahwāl al Shakhsiyah [Principles of personal status in Islamic Law]. Cairo, Dar al-Ma'arif. 3d ed. 1961. 724 p. LAW ISL 7 Abda 1961

al-Āmili, Hussein Yusuf Makki. al-Mut'a fi al-Islam [Temporary marriage in Islam]. Beirut, Dar al-Andalus, 1961. 141 p. LAW ISL 7 Amil 1961

Area Handbook for the Yemens. Washington, D.C., American University, 1977. 263 p. DS247.Y4N96

Ayyūb, Muhammad al-Sayyid. Al-Yaman bayn al-Qāt wa Fasād al-Hukm qabl al-Thawrah [Yemen between qat and government corruption before the Revolution]. Cairo, Dar al-Ma'arif, 1963. 112 p. HN761.Y4A95

Chelhod, Joseph. Le droit dans la société bédouine. Paris, Marcel Rivière et Cie, 1971. 461 p. LAW NEA 7 Chel 1971

------. La société yéménite et le droit. 2 L'Homme. 67-86 (1975). GN1-H68

Devictor, Jean Claude and Didier Husson. Yémen. 2d ed. Bois-d'Arcy, Nouvelles Frontières, 1977. 112 p. DS247.Y42D48

The Economist [London]. May 15, 1982. p. 87-88. HG11E2

Gibb, H.A.R. and J.H. Kramers, eds. Ismailiya. Shorter encyclopaedia of Islam. p. 179. Ithaca, Cornell University Press, 1953. DS39.E52 1953a

Hassan, M. Rustum, ed., al-Idārah al-Ām'mah fi al-Jumhūriyah al-Arabiyah al-Yamaniyah [Public administration in YAR]. Cairo, Jāmi'at al-Duwal al-Arabiyah, 1972. 80 p. JQ1825.Y4H37

al-Hilli, Abu al-Qāsim Najm al-Dīn Jafar ibn al-Hasan. Sharā'i al-Islām [Islamic laws]. Beirut, Matba'at al-Adab fi al Najaf, 1969. v.3, p.44. LAW ISL 7 Hill 1969

al-Husari, Ahmad. al-Hudūd wa al-Ashribah fi al-Fiqh al-Islāmī [Sanctions and alcoholic beverages in Islamic jurisprudence]. Amman, Maktabat al-Aqsa, 1972. 728 p. LAW ISL 7 Husa 1972

International encyclopaedia of comparative law. v.1, National reports, V/Z. Tübingen, J.C.B. Mohr, 1975. p.Y1-3. K530.I57 1973

al-Jarīdah al-Rasmiyah. al-Jumhūriyah al-Arabiyah al-Yamaniyah [Official gazette of the YAR]. San'a, 1976, 1979-80. LAW Yem 1

Mahmūd, Hasan Sulaymān. Tārīkh al-Yaman al-Siyāsi [Political history of Yemen]. 1st ed. Baghdad, Dar al-Jahiz, 1969. 313 p.

2 Majallat al-Sharī'ah wa al-Qānūn [Review of Shari'ah and law]. 27-63 (1978-79). LAW Per 1978-79

al-Mejellah [Ottoman civil code]. Constantinople, 1879. 317 p. LAW TUR 3 Civil 1879

The Middle East and North Africa, 1982-83. 29th ed. London, Europa Publications, 1982. p. 875-892. DS49.M5

al-Muaffaq, Abd Allah. al-Shī'ah fi al'Yaman [The Shi'ah in Yemen]. Cairo, al-Matba'ah al-Salafiyah, 1970. 80 p. BP192.7.Y4M84

Ibn al-Murtada, Abu al-Hasan Abd Allah. Sharh al-Azhār [Interpretation of the flowers]. Cairo, Matba'at Hijazi, 193- . v. 4, 602 p. LAW ISL 7 Ibn.M 193-

al-Qāsim, A.A.R. al-Nizām al-Qadā'i al Islāmī [Islamic judicial system]. Cairo, Dar al-Sa'ada, 1973. 863 p. LAW ISL 7 Qasi 1973

Rouaud, Alain. Les Yémen et leurs populations. Bruxelles, Complexe, 1979. 239 p. DS237.Y4R68

Sha'bān, Zaki al-Dīn. al-Ahkām al-Shar'iyah lil Ahwāl-al-Shakhsiyah [The Shari'ah principles for personal status]. Egypt, Dar al-Ta'lif, 1964. 287 p. LAW ISL 7 Shab 1964

al-Shirwāni, abd al-Hamid. Tuhfat al-Muhtāj bi-Sharh al-Minhāj [The needy's jewel in explaining the method]. Cairo, 1972. 10 v. LAW ISL 7 Shir 197

The Statesman's year-book, 1984-85. New York, St. Martin's Press, 1985. p. 1598-1600. JA51.S7

Stookey, Robert W. Red Sea gate-keepers. The Yemen Arab Republic and the People's Democratic Republic. 10 Middle East review, No.4, 39-47 (1978). DS41.M523 1977-79

------. Social structure and politics in the Yemen Arab Republic. 28 Middle East journal, No. 3, 409-418 (1974). Per

Subhī, Ahmad Mahmūd. al-Mazhab al-Zaydī [The Zaydi doctrine]. Alexandria, 1981. 76 p. ISL 7 Subh 1981

Tashrī'āt al-Jumhuriyah al-Arabiyah al-Yamaniyah [Legislation of the YAR] (1972) [in Arabic]. LAW YEM 2 1972

------. (1978) LAW YEM 2 1978

------. (1980) LAW YEM 2 1980

al-Tashrī'āt al-Maliyah wa al-Iqtisādiyah wa Qānūn al-Amal lil-Jumhuriyah [Fiscal, economic, and labor legislation for YAR]. (1971) [in Arabic]. 272 p. LAW YEM 2 1971

al-Thawr, Abdallah Ahmad. Hādhihī Hiya al-Yaman [This is Yemen]. San'a, al-Jumhuriyah al-Arabiyah al-Yamaniyah, 1969. 532 p. DS247.Y42T5

Van Arendonk, Cornelis. Les débuts de l'Imamat zaidite au Yémen. Translated by Jacques Ryckmans [from the Arabic into French]. Leyde, E.J. Brill, 1960. 378 p. DS247.Y4A74

World Peace Through Law Center. Law and judicial systems of nations. 3d ed. Washington, 1978. p. 842-843. K583.W64 1978.